

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 112 of 1996()

**OPMV.459/1992 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
MAVELIKKARA**
.....

APPELLANT:

**V.V. SUDHAKARAN @ THOMAS PAUL
SON OF V.K. VELAYUDHAN,
ELAVUNKAL HOUSE, NEAR LAKSHOM
VEEDU COLONY, KOONAMTHAI,
EDAPPALLY, COCHIN 682 024.**

**BY ADV. SRI.ANIL S.RAJ
SRI.MATHEW JOHN (K)**

RESPONDENTS:

- 1. N.T. PAUL @ THOMAS PAUL, SON OF
N.P. THOMAS, NADAKKAL HOUSE,
M.C. STORES, THIRUVALLA.**
- 2. JOHN SEBASTIAN, SON OF DEVASSYA,
POTHANAMTHADATHIL, KANDAMANGALAM
MURI, ATHIRAMPUZHA VILLAGE,
KOTTYAM.**
- 3. MANAGER, UNITED INDIA INSURANCE
CO. LTD., KAYAMKULAM BRANCH (SUBSTITUTED)**

**THE NAME O THE SECOND RESPONDENT IS DELETED
FROM THE PARTY ARRAY AS PER ORDER DATED
14.10.1999 ON C.M.P. NO.5638 OF 1999.**

**R3 IS DELETED AND SUBSTITUTED WITH THE MANAGER,
NEW INDIA ASSURANCE COMPANY LTD., KAYAMKULAM**

**BRANCH AS PER ORDER DATED 15.11.2005 IN
R.P. NO.50 OF 2005.**

**BY ADV. SRI.M.A.PATTALI, JESSY GEORGE
SRI.A.C.DEVY**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 112 OF 1996

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Dated this the 6th day of July, 2007

J U D G M E N T

Petitioner in O.P(MV) No.459 of 1992 on the file of the Motor Accidents Claims Tribunal, Mavelikara is the appellant.

2. Petitioner met with an accident at about 2.30 p.m. on 20.5.1990 and sustained injuries. He filed the petition claiming compensation against the owner, driver and Insurer of the vehicle. The owner and Insurer contested the case. It was contended that the driver was not negligent in driving the vehicle. The quantum of compensation claimed was denied. Tribunal found that the petitioner also contributed to the accident and negligence of the petitioner was fixed as 50%. So the liability was fixed at the rate of 50:50. Tribunal also found that the petitioner was entitled to get a total compensation of 38,000/-, but award was passed allowing him to recover only Rs.19,000/-. Challenging the inadequacy of the quantum of compensation awarded, this appeal is filed.

3. In this appeal instead of New India Assurance Co.

Ltd., United India Insurance Co. Ltd. was arrayed as the third respondent. No objection was seen raised by the Company or by any party before this Court. This Court by judgment dated 21.2.1996 allowed the appeal in part and awarded an additional compensation of Rs.15,000/- with 9% interest. Subsequently, the petitioner himself filed R.P. No.60 of 2005 for review of the judgment pointing out the mistake occurred. This court by order dated 15.11.2005 allowed the R.P. and the judgment dated 21.2.1996 was recalled and M.F.A. was posted for hearing. Cause title of the appeal was also corrected substituting United India Insurance Co. Ltd. with New India Assurance Co. Ltd., as the Insurer. When the appeal came up for hearing, learned counsel appearing for the Insurer has raised a preliminary objection that so far as the Company is concerned, the appeal is time barred. It is argued that no delay petition was filed though third respondent was made as a party in the year 2005 only.

4. It is seen that Review Petition was allowed after hearing the Insurer also. I do not find any reason to dismiss the appeal on a technical ground at this distance of time. The

Tribunal found that the petitioner was also responsible for the accident. I do not find any reason to interfere with that finding.

5. Petitioner underwent three surgeries. Tribunal awarded only a sum of Rs.1,000/- towards treatment expenses. Evidence on record shows that petitioner was treated in a private nursing home and he had to spent a lot of amounts for treatment. So I am of the view that the Tribunal ought to have awarded an amount of Rs.15,000/- towards treatment expenses. Hence the petitioner is entitled to get Rs.14,000/- more under that head. Petitioner is also entitled to get Rs.5,000/- more towards pain and suffering and another Rs.5,000/- towards loss of amenities etc. So petitioner is entitled to get an additional compensation of Rs.24,000/-. But considering the fact that petitioner had also contributed to the accident, which was fixed as 50%, he is entitled to get only Rs.12,000/-.

6. Regarding the quantum of interest, I am of the view that the third respondent cannot be saddled with the interest liability from February, 1995 till November, 2005.

In the result, appeal is allowed in part. An award is passed in favour of the petitioner allowing the petitioner to recover an additional compensation of Rs.12,000/- with 9% interest from the date of petition till 31.1.1995 and from 1.12.2005 onwards till date of realisation. Third respondent Insurer is directed to deposit that amount also. On deposit, the petitioner can withdraw the whole amount.

K. PADMANABHAN NAIR, JUDGE.

K. PADMANABHAN NAIR, J.

M.F.A. NO. 112 OF 1996

J U D G M E N T

6TH JULY, 2007